

**Introduced by Senator Hollingsworth**February 20, 2003

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An act to amend Section 12301.6 of the Welfare and Institutions Code, relating to in-home supportive services.

## LEGISLATIVE COUNSEL'S DIGEST

SB 463, as introduced, Hollingsworth. In-home supportive services.

Existing law provides for the county-administered In-Home Supportive Services (IHSS) program, under which qualified aged, blind, and disabled persons are provided with services in order to permit them to remain in their own homes and avoid institutionalization.

Existing law permits services to be provided under the IHSS program either through the employment of individual providers, a contract between the county and an entity for the provision of services, the creation by the county of a public authority, or a contract between the county and a nonprofit consortium.

This bill would make a technical, nonsubstantive change to IHSS provisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 12301.6 of the Welfare and Institutions
- 2 Code is amended to read:
- 3 12301.6. (a) Notwithstanding Sections 12302 and 12302.1,
- 4 a county board of supervisors may, at its option, elect to do either
- 5 of the following:



1 (1) Contract with a nonprofit consortium to provide for the  
2 delivery of in-home supportive services.

3 (2) Establish, by ordinance, a public authority to provide for  
4 the delivery of in-home supportive services.

5 (b) (1) To the extent that a county elects to establish a public  
6 authority pursuant to paragraph (2) of subdivision (a), the enabling  
7 ordinance shall specify the membership of the governing body of  
8 the public authority, the qualifications for individual members, the  
9 manner of appointment, selection, or removal of members, how  
10 long they shall serve, and other matters as the board of supervisors  
11 deems necessary for the operation of the public authority.

12 (2) A public authority established pursuant to paragraph (2) of  
13 subdivision (a) shall be both of the following:

14 (A) An entity separate from the county, and shall be required  
15 to file the statement required by Section 53051 of the Government  
16 Code.

17 (B) A corporate public body, exercising public and essential  
18 governmental functions and that has all powers necessary or  
19 convenient to carry out the delivery of in-home supportive  
20 services, including the power to contract for services pursuant to  
21 Sections 12302 and 12302.1 and that makes or provides for direct  
22 payment to a provider chosen by the recipient for the purchase of  
23 services pursuant to Sections 12302 and 12302.2. Employees of  
24 the public authority shall not be employees of the county for any  
25 purpose.

26 (3) (A) As an alternative, the enabling ordinance may  
27 designate the board of supervisors as the governing body of the  
28 public authority.

29 (B) Any enabling ordinance that designates the board of  
30 supervisors as the governing body of the public authority shall also  
31 specify that no fewer than 50 percent of the membership of the  
32 advisory committee shall be individuals who are current or past  
33 users of personal assistance services paid for through public or  
34 private funds or recipients of services under this article.

35 (C) If the enabling ordinance designates the board of  
36 supervisors as the governing body of the public authority, it shall  
37 also require the appointment of an advisory committee of not more  
38 than 11 individuals who shall be designated in accordance with  
39 subparagraph (B).



(D) Prior to making designations of committee members pursuant to subparagraph (C), or governing body members in accordance with paragraph (4), the board of supervisors shall solicit recommendations of qualified members of either the governing body of the public authority or of any advisory committee through a fair and open process that includes the provision of reasonable, written notice to, and a reasonable response time by, members of the general public and interested persons and organizations.

(4) If the enabling ordinance does not designate the board of supervisors as the governing body of the public authority, the enabling ordinance shall require the membership of the governing body to meet the requirements of subparagraph (B) of paragraph (3).

(c) (1) Any public authority created pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients under paragraph (3) of subdivision (e) within the meaning of Chapter 10 (commencing with Section 3500) of Division 4 of Title 1 of the Government Code. Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services to them.

(2) (A) Any nonprofit consortium contracting with a county pursuant to this section shall be deemed to be the employer of in-home supportive services personnel referred to recipients pursuant to paragraph (3) of subdivision (e) for the purposes of collective bargaining over wages, hours, and other terms and conditions of employment.

(B) Recipients shall retain the right to hire, fire, and supervise the work of any in-home supportive services personnel providing services for them.

(d) A public authority established pursuant to this section or a nonprofit consortium contracting with a county pursuant to this section, when providing for the delivery of services under this article by contract in accordance with Sections 12302 and 12302.1 or by direct payment to a provider chosen by a recipient in accordance with Sections 12302 and 12302.2, shall comply with and be subject to, all statutory and regulatory provisions applicable to the respective delivery mode.

(e) Any nonprofit consortium contracting with a county pursuant to this section or any public authority established

1 pursuant to this section shall provide for all of the following  
2 functions under this article, but shall not be limited to those  
3 functions:

4 (1) The provision of assistance to recipients in finding in-home  
5 supportive services personnel through the establishment of a  
6 registry.

7 (2) Investigation of the qualifications and background of  
8 potential personnel.

9 (3) Establishment of a referral system under which in-home  
10 supportive services personnel shall be referred to recipients.

11 (4) Providing for training for providers and recipients.

12 (5) Performing any other functions related to the delivery of  
13 in-home supportive services.

14 (6) Ensuring that the requirements of the personal care option  
15 pursuant to Subchapter 19 (commencing with Section 1396) of  
16 Chapter 7 of Title 42 of the United States Code are met.

17 (f) (1) Any nonprofit consortium contracting with a county  
18 pursuant to this section or any public authority created pursuant to  
19 this section shall be deemed not to be the employer of in-home  
20 supportive services personnel referred to recipients under this  
21 section for purposes of liability due to the negligence or intentional  
22 torts of the in-home supportive services personnel.

23 (2) In no case shall a nonprofit consortium contracting with a  
24 county pursuant to this section or any public authority created  
25 pursuant to this section be held liable for action or omission of any  
26 in-home supportive services personnel whom the nonprofit  
27 consortium or public authority did not list on its registry or  
28 otherwise refer to a recipient.

29 (3) Counties and the state shall be immune from any liability  
30 resulting from their implementation of this section in the  
31 administration of the In-Home Supportive Services Program. Any  
32 obligation of the public authority or consortium pursuant to this  
33 section, whether statutory, contractual, or otherwise, shall be the  
34 obligation solely of the public authority or nonprofit consortium,  
35 and shall not be the obligation of the county or state.

36 (g) Any nonprofit consortium contracting with a county  
37 pursuant to this section shall ensure that it has a governing body  
38 that complies with the requirements of subparagraph (B) of  
39 paragraph (3) of subdivision (b) or an advisory committee that

1 complies with subparagraphs (B) and (C) of paragraph (3) of  
2 subdivision (b).

3 (h) Recipients of services under this section may elect to  
4 receive services from in-home supportive services personnel who  
5 are not referred to them by the public authority or nonprofit  
6 consortium. Those personnel shall be referred to the public  
7 authority or nonprofit consortium for the purposes of wages,  
8 benefits, and other terms and conditions of employment.

9 (i) (1) Nothing in this section shall be construed to affect the  
10 state's responsibility with respect to the state payroll system,  
11 unemployment insurance, or workers' compensation and other  
12 provisions of Section 12302.2 for providers of in-home supportive  
13 services.

14 (2) The Controller shall make any deductions from the wages  
15 of in-home supportive services personnel, who are employees of  
16 a public authority pursuant to paragraph (1) of subdivision (c), that  
17 are agreed to by that public authority in collective bargaining with  
18 the designated representative of the in-home supportive services  
19 personnel pursuant to Chapter 10 (commencing with Section  
20 3500) of Division 4 of Title 1 of the Government Code and transfer  
21 the deducted funds as directed in that agreement.

22 (3) Any county that elects to provide in-home supportive  
23 services pursuant to this section shall be responsible for any  
24 increased costs to the in-home supportive services case  
25 management, information, and ~~payrolling~~ *payroll* system  
26 attributable to that election. The department shall collaborate with  
27 any county that elects to provide in-home supportive services  
28 pursuant to this section prior to implementing the amount of  
29 financial obligation for which the county shall be responsible.

30 (j) To the extent permitted by federal law, personal care option  
31 funds, obtained pursuant to Subchapter 19 (commencing with  
32 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
33 along with matching funds using the state and county sharing ratio  
34 established in subdivision (c) of Section 12306, or any other funds  
35 that are obtained pursuant to Subchapter 19 (commencing with  
36 Section 1396) of Chapter 7 of Title 42 of the United States Code,  
37 may be used to establish and operate an entity authorized by this  
38 section.

39 (k) Notwithstanding any other provision of law, the county, in  
40 exercising its option to establish a public authority, shall not be



1 subject to competitive bidding requirements. However, contracts  
2 entered into by either the county, a public authority, or a nonprofit  
3 consortium pursuant to this section shall be subject to competitive  
4 bidding as otherwise required by law.

5 (l) (1) The department may adopt regulations implementing  
6 this section as emergency regulations in accordance with Chapter  
7 3.5 (commencing with Section 11340) of Part 1 of Division 3 of  
8 Title 2 of the Government Code. For the purposes of the  
9 Administrative Procedure Act, the adoption of the regulations  
10 shall be deemed an emergency and necessary for the immediate  
11 preservation of the public peace, health and safety, or general  
12 welfare. Notwithstanding Chapter 3.5 (commencing with Section  
13 11340) of Part 1 of Division 3 of Title 2 of the Government Code,  
14 these emergency regulations shall not be subject to the review and  
15 approval of the Office of Administrative Law.

16 (2) Notwithstanding subdivision (h) of Section 11364.1 and  
17 Section 11349.6 of the Government Code, the department shall  
18 transmit these regulations directly to the Secretary of State for  
19 filing. The regulations shall become effective immediately upon  
20 filing by the Secretary of State.

21 (3) Except as otherwise provided for by Section 10554, the  
22 Office of Administrative Law shall provide for the printing and  
23 publication of these regulations in the California Code of  
24 Regulations. Emergency regulations adopted pursuant to this  
25 subdivision shall remain in effect for no more than 180 days.

26 (m) (1) In the event that a county elects to form a nonprofit  
27 consortium or public authority pursuant to subdivision (a) before  
28 the State Department of Health Services has obtained all necessary  
29 federal approvals pursuant to paragraph (3) of subdivision (j) of  
30 Section 14132.95, all of the following shall apply:

31 (A) Subdivision (c) shall apply only to those matters that do not  
32 require federal approval.

33 (B) The second sentence of subdivision (g) shall not be  
34 operative.

35 (C) The nonprofit consortium or public authority shall not  
36 provide services other than those specified in paragraphs (1), (2),  
37 (3), (4), and (5) of subdivision (d).

38 (2) Paragraph (1) shall become inoperative when the State  
39 Department of Health Services has obtained all necessary federal

1 approvals pursuant to paragraph (3) of subdivision (j) of Section  
2 14132.95.

3 (n) (1) One year after the effective date of the first approval by  
4 the department granted to the first public authority, the Bureau of  
5 State Audits shall commission a study to review the performance  
6 of that public authority.

7 (2) The study shall be submitted to the Legislature and the  
8 Governor not later than two years after the effective date of the  
9 approval specified in subdivision (a). The study shall give special  
10 attention to the health and welfare of the recipients under the  
11 public authority, including the degree to which all required  
12 services have been delivered, out-of-home placement rates,  
13 prompt response to recipient complaints, and any other issue the  
14 director deems relevant.

15 (3) The report shall make recommendations to the Legislature  
16 and the Governor for any changes to this section that will further  
17 ensure the well-being of recipients and the most efficient delivery  
18 of required services.

19 (o) Commencing July 1, 1997, the department shall provide  
20 annual reports to the appropriate fiscal and policy committees of  
21 the Legislature on the efficacy of the implementation of this  
22 section, and shall include an assessment of the quality of care  
23 provided pursuant to this section.

